

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No. 4405/Del/2012

AY: 2004-05

Dy.CIT, Central Circle 5
New Delhi

vs. M/s Royal Fragrances P.Ltd.
3rd Floor, Netaji Subhash Marg
Daryaganj
Delhi 110 002

PAN: AACCR 6531 N

Cross Objection No. 227/Del/15

(ITA No. 4405/Del/2012)

AY: 2004-05

M/s Royal Fragrances P.Ltd.
Delhi

vs. Dy.CIT, C.C.5
New Delhi

ITA No. 5244/Del/2014

AY: 2004-05

M/s Royal Fragrances P.Ltd.
Delhi

vs. Dy.CIT, C.C.5
New Delhi

(Appellant)

(Respondent)

Appellant by : Mrs.Meenakshi Singh, CIT, D.R

Respondent by : Sh. Gautam Jain, Adv.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA 4405/Del/2012 is filed by the Revenue directed against the order of the Ld.CIT(A)-XXXI, New Delhi dated 14.6.2012, the Cross Objection i.e. C.O.No.227/Del/15 (in ITA 4405/Del/12) is filed by the assessee, ITA 5244/Del/2014 is filed by the assessee pertaining to the Assessment Year (A.Y.) 2004-05.

2. We take up the Cross Objection first, as it is jurisdictional issue. The grounds of C.O. read as follows.

“That notice u/s 153C of the Act has been issued without satisfying the statutory preconditions contained in the Act therefore the assumption of jurisdiction to initiate proceedings u/s 153C of the Act and frame assessment u/s 153CI143(3) of the Act was not in accordance with law and thus, be held to invalid.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since no money, bullion jewellery or other valuable article or thing or books of accounts or documents belonging to the appellant were seized as a result of search on Raj Darbar Group of cases the assumption of jurisdiction u/s 153C of the Act was illegal, invalid and unsustainable.

2 That furthermore the notice issued u/s 153A of the Act was beyond the period of six assessment years immediately preceding the assessment year relevant to the previous year in which the books of accounts or documents were handed over by the learned Assessing Officer of the appellant and as such even otherwise impugned assessment is barred by limitation.

3 That the addition made of Rs. 90,00,0001- representing the share capital received by the assessee company is perse without jurisdiction as it is not based on any incriminating material found as a result of search of Rajdarbar group of cases and therefore beyond the scope of impugned assessment.

4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the addition of Rs. 45,00,0001- representing alleged unexplained share capital received by the assessee company and brought to tax u/s 68 of the Act.

It is therefore prayed that, it be held that, assumption of jurisdiction to initiate proceedings u/s 153C of the Act and frame assessment u/s 153CI143(3) of the Act was not in accordance with law and thus, be held to invalid. It be further held that, addition so sustained is not in accordance with law and therefore be deleted and appeal of the appellant company be allowed.”

3. After hearing rival contentions, we find that the addition in question for the impugned A.Y. is not based on any material found or seized during the course of search. From para 4 of the order of the Assessing Officer (A.O.) it is clear that the addition in question was based on post search proceedings. It is also not in dispute that the assessment of the case on hand, is not abated. Under these facts and circumstances of the case, we have to hold that the issue is covered in favour of the assessee and against the Revenue by the decision of the Jurisdictional High Court in the case of *Kabul Chawla vs. ACIT (ITAT Delhi)* wherein it was held as follows.

“Even otherwise, the judgement referred by the assessee is squarely covered the issue in hand as their Lordships in the above judgement have observed as under :-

“37. On a conspectus of [Section 153A\(1\)](#) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under [Section 132](#) of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus

with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under [Section 153A](#) merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

39. The question framed by the Court is answered in favour of the Assessee and against the Revenue."

4. In the result the Cross Objection of the assessee is allowed.

5. ITA 4405/Del/2012 is filed by the Revenue disputing the relief granted by the Ld.CIT(A) on merits. In view of our decision on the jurisdictional issue at paragraph 3 and 4 above, the Revenue's appeal becomes infructuous and is dismissed as such.

6. ITA 5244/Del/14 is filed by the assessee. This appeal is time barred by 766 days. The Ld.Counsel for the assessee submitted that he is not pressing this appeal. Hence this appeal is dismissed as 'not pressed'.

7. In the result ITA 4405/Del/12 is dismissed. The C.O. 227/Del/15 is allowed and ITA 5244/Del/14 is dismissed as 'not pressed'.

Order pronounced in the Open Court on 16th August, 2016.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 16th August, 2016

- *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR